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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,435	08/17/2001	Hongjie Cao	1942	3469

7590

01/15/2002

Karen G. Kaiser
NATIONAL STARCH AND CHEMICAL COMPANY
10 Finderne Avenue
Bridgewater, NJ 08807-0500

EXAMINER

GOLLAMUDI, SHARMILA S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 01/15/2002

3

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/932,435

Applicant(s)

CAO ET AL.

Examiner

Sharmila S. Gollamudi

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-- The MAILING DATE f this communicati n app ars on th cover sheet with the c rrespondence address --

Peri d for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disp sition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claims 1-22 are included in the prosecution of this application.

Claim Objections

Claims 14 and 17 are objected to because of the following informalities: proper Markush Language is "is selected from the group consisting of A, B, C, and D". Appropriate correction is required.

The recitation of 80% in parenthesis in claim 12 is objected to. Examiner suggests removing the parenthesis. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 is indefinite since it depends on claim 13, which is improper dependency. Claim 12 is indefinite since it is unclear what the proper dependency of claim 12 is.

The term "NTU" in claim 12 is a relative term which renders the claim indefinite. The term "NTU" is not defined by the claim, the specification does not provide a

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standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11,13-17, 21, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Sajic et al (6017860).

Sajic et al disclose a hair composition containing xanthan gum and amphomer and applying it to the hair (Note formulation 14 and example 3). The reference teaches curl retention by applying the composition (Note table 3).

Claims 1-4, 7-8, 10, 11, 15, 18, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 11-236310, of the record.

The reference discloses a gel or cream composition containing xanthan gum. The reference discloses the method of making xanthan gum used in the composition. (Note pg. 5, 6, and example 1)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 11-236310, cited above.

As cited above, JP 11-236310 teaches a composition containing xanthan gum. The reference teaches the drying decrease (moisture content) to be preferably under 12% (pg. 5, first paragraph). The reference teaches that if the drying decrease is too high then the xanthan gum will not heat sufficiently, thus decreasing viscosity of the gum if it is not adequately heated.

The reference does not provide an example where the drying decrease is specifically 8% or less.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use 8% or less drying decreases since the JP 11-236310 suggests that a drying decrease of 15% or less is preferable and teaches the advantage of a low moisture content. One would be motivated to manipulate the conditions of the reference with the expectation of similar results as suggested by the reference.

Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 11-236310, cited above, in combination with Sajic et al, cited above.

As set forth above, JP 11-236310 teaches a composition containing xanthan gum that can be in the form of a cream or gel and can be used for hair cosmetics. The reference teaches the method of making xanthan gum prior to mixing it into a cosmetic composition. The reference discloses that xanthan gum provides stability to the composition but has low viscosity and a greasy feel if too much is added. The reference

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discloses heating the gum 100 degrees and above to increase viscosity, and not to heat it above 140 degrees to avoid discoloration of the gum. The reference teaches the preferable range of the gum to be 5000-22000 cP and thus it can be used in small quantities. (Note 4-6 and example 1).

JP 11-236310 does not teach using a second polymer in the composition or curl retention.

Sajic et al teach compositions containing xanthan gum and a secondary polymer. The reference teaches the method of applying the composition to the hair. Sajic et al teach the turbidity of the compositions (Note examples). Further, the reference teaches the curl retention at high humidity and the styling effect of the composition (Note Table 3 and 4 and examples).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of JP 11-236310 and Sajic et al since both teach compositions containing xanthan gum. One would be motivated to use xanthan gum and a second polymer to increase the viscosity of the JP 11-236310's composition to the desired consistency; thus increasing the holding/styling capability of the composition since a thick composition would give a more rigid support of the hair.

Miscellaneous Remarks

*Note that in a claim drawn to a composition, a statement as to how the composition or component of the composition does not hold patentable weight. The examiner suggests changing the claim to method claims.

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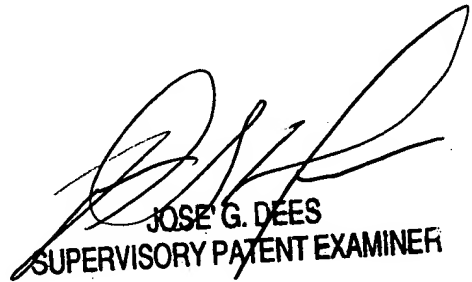
Communications

Any inquiry concerning this communication from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is (703) 305-2147. The examiner can be normally reached M-F from 7:30 am to 4:15pm.

If attempts to reach the examiner by the telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached at (703) 308-4628. The fax number for this organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is (703) 308-1235.

SSG


JOSE G. DEES
SUPERVISORY PATENT EXAMINER
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